

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RACHEL GNIEWKOWSKI, et al., Plaintiffs, vs. LETTUCE ENTERTAIN YOU ENTERPRISES, INC., Defendant.	No. 2:16-cv-1898-AJS LEAD CASE
ACCESS NOW, INC., a not-for-profit corporation; R. DAVID NEW; ERICA WALZ, and LISA FRAZIER, Plaintiffs, vs. OMAHASTEAKS.COM, INC., Defendant.	No. 2:17-cv-00269-AJS MEMBER CASE

CONSENT DECREE

1. This Consent Decree is entered into as of the Effective Date, as defined below in Paragraph 11, by and between the following parties: Plaintiffs, Access Now, Inc., R. David New, Erica Walz, and Lisa Frazier (collectively “Access Parties”), and Defendant, OmahaSteaks.com, Inc., (“Omaha Steaks”).

RECITALS

2. Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181- 12189 (“ADA”) and its implementing regulation, 28 C.F.R. pt. 36, prohibit discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation by any private

entity that owns, leases (or leases to), or operates any place of public accommodation. 42 U.S.C. § 12182(a); 28C.F.R. § 36.201(a).

3. On or about January 4, 2017, certain of the Access Parties sent a demand letter to Omaha Steaks, asserting that Omaha Steaks' website had substantial access barriers, in violation of the ADA, and threatening litigation if settlement was not reached.

4. On February 27, 2017, Omaha Steaks filed a declaratory judgment action in the United States District Court for the District of Nebraska, alleging that the Access Parties' threatened lawsuit was moot because Omaha Steaks undertook efforts to make its website ADA-compliant before receiving the demand letter, and that a lawsuit was not ripe because no deadline for compliance exists in any law or regulation. *OmahaSteaks.com, Inc. v. Access Now, Inc., et al.*, Case No. 17-cv-60 (D. Neb. Feb. 27, 2017).

5. On March 1, 2017, the Access Parties filed this lawsuit against Defendant. The Access Parties alleged that Defendant's website, www.omahasteaks.com, (the "Website"), contains barriers that prevent full and equal use by persons with a visual impairment, in violation of Title III of the ADA, 42 U.S.C. §§12181–12189.

6. By entry into this Consent Decree, Omaha Steaks does not admit or concede any wrongdoing, and the Access Parties do not concede Omaha Steaks' mootness and ripeness claims.

7. This Consent Decree resolves, settles, and compromises all issues between the Parties based on the allegations set forth in their respective Complaints.

JURISDICTION

8. The Parties agree that Omaha Steaks' Website is a public accommodation subject to Title III of the ADA. 42 U.S.C §12181(7); 12182(a); 28 C.F.R. §§ 36.104, 36.201(a).

9. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 12188.

AGREED RESOLUTION

10. The Parties agree that it is in their best interest to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the Parties agree to the entry of this Consent Decree without trial or further adjudication of any issues of fact or law raised in their respective Complaints.

In resolution of this action, the parties hereby **AGREE** and the Court expressly **APPROVES, ENTERS, AND ORDERS** the following:

DEFINITIONS

11. Effective Date means the date on which this Consent Decree is entered on the Court's Docket Sheet following approval by the Court.

12. Person(s) with a visual impairment means any person who has a physical, mental, or sensory impairment that substantially limits him or her in the major life activity of seeing.

TERM

13. The term of this Consent Decree shall commence as of the Effective Date and remain in effect for the earlier of: (a) sixty (60) months from the Effective Date; or (b) the date the regulations are adopted in the Department of Justice's anticipated but yet-to-be adopted regulations for websites under Title III of the ADA.

COMPLIANCE WITH TITLE III OF THE ADA

14. Omaha Steaks shall not deny persons with a visual impairment the opportunity to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations through its Website as set forth herein. 42 U.S.C. §12182(b)(1)(A)(i); 28 C.F.R.

§ 36.202(a).

15. Omaha Steaks shall ensure full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations provided by and through its Website according to the following timeline and requirements provided that the following dates will be extended in the instance that the Department of Justice releases regulations for websites under Title III of the ADA while this Consent Decree is in effect and which contain compliance dates and/or deadlines further in the future. By March 1, 2018, Omaha Steaks shall make reasonable efforts to ensure that the Website conforms to, at a minimum, the Web Content Accessibility Guidelines 2.0 Level A and AA Success Criteria (“WCAG 2.0 AA”).

16. Omaha Steaks shall test the Website on a periodic basis with assistive technology such as screen readers and screen magnifiers, and with users with disabilities who use these technologies.

17. Omaha Steaks shall engage an experienced accessibility consultant to assess the Website and to provide Omaha Steaks with specific recommendations to facilitate website accessibility and conformance with WCAG 2.0 AA.

18. **Web Accessibility Policy:** By March 1, 2018, Omaha Steaks shall post on its website a Web Accessibility Policy consistent with the general substance of the draft Web Accessibility Policy attached hereto as Exhibit A to this Consent Decree.

19. **Web Accessibility Feedback:** The Policy shall provide a method to provide feedback, including an accessible form to submit feedback or an email address to contact representatives knowledgeable about the Web Accessibility Policy.

20. Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by e-mail and by overnight express mail or United States first class mail, addressed as follows:

To Plaintiffs:

Benjamin J. Sweet, Esquire
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
412-322-9243 (phone)
412-231-0246 (fax)
bsweet@carlsonlynch.com

To Defendant:

Nora M. Kane, Esquire
General Counsel
Omaha Steaks International, Inc.
11030 "O" St.
Omaha, NE 68137
T. (402) 599-8866
norak@omahasteaks.com

MODIFICATION

21. No modification of this Consent Decree shall be effective unless in writing and signed by authorized representatives of all Parties.

ENFORCEMENT AND OTHER PROVISIONS

22. The interpretation and enforcement of this Consent Decree shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Plaintiffs and Defendant have agreed to settle all matters relating to costs, damages, attorneys' fees, experts' fees, and other financial matters through a separate, confidential agreement (the "Letter Agreement") hereby incorporated by reference into this Consent Decree. This Consent Decree is being filed in both this Court and the United States District Court for the

District of Nebraska, and together, the two filings and the Letter Agreement comprise the entire agreement of the Parties concerning the subject matter described in Paragraphs 3-5, and no other statement, promise, or agreement, either written or oral, made by any party or agent of any party, that is not contained in this Consent Decree, and concerns the subject matter described in Paragraphs 3-5, shall be enforceable.

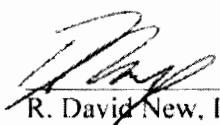
24. If any provision of this Consent Decree is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect, as nearly as possible and to the fullest extent permitted by applicable law, its original intent and shall not, in any event, affect any other provisions, all of which shall remain valid and enforceable to the fullest extent permitted by applicable law.

25. The signatories represent that they have the authority to bind the respective parties, Access Now, Inc., R. David New, Erica Walz, Lisa Frazier, and OmahaSteaks.com, Inc. to this Consent Decree.

CONSENT DECREE HAS BEEN READ

26. The Consent Decree has been carefully read by each of the Parties, and its contents are known and understood by each of the Parties. This Consent Decree is signed freely by each party executing it. The Parties each had an opportunity to consult with their counsel prior to executing the Consent Decree.

Agreed and Consented to:



R. David New, Individually and on behalf of Access Now, Inc.

Erica Walz
Erica Walz, Individually

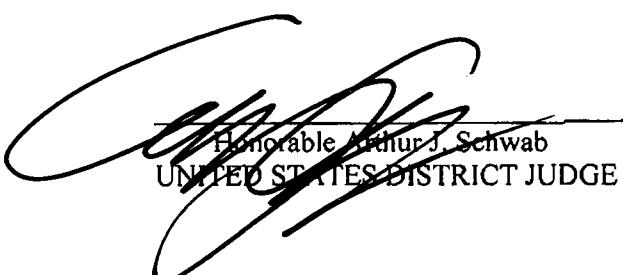
Lisa Frazier, Individually

OmahaSteaks.com, Inc.

By _____

Its _____

DONE AND ORDERED this 11th day of Apr. 1, 2017


Honorable Arthur J. Schwab
UNITED STATES DISTRICT JUDGE

cc: Counsel of record via CM/ECF

Erica Walz, Individually

Lisa Frazier

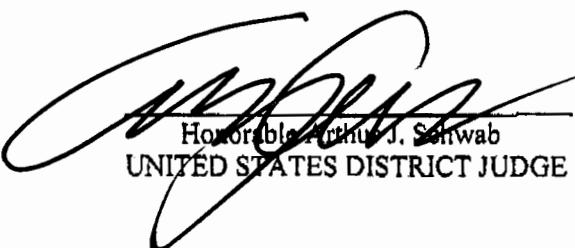
Lisa Frazier, Individually

OmahaSteaks.com, Inc.

By _____

Its _____

DONE AND ORDERED this 11th day of April, 2017


Honorable Arthur J. Schwab
UNITED STATES DISTRICT JUDGE

cc: Counsel of record via CM/ECF

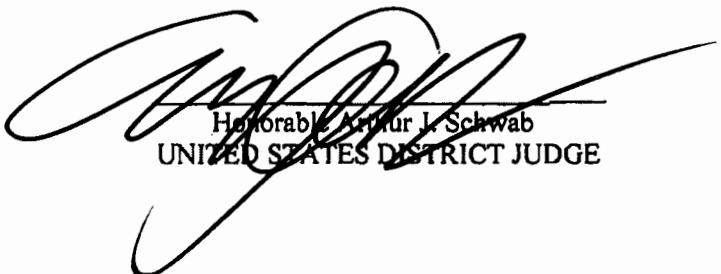
Erica Walz
Erica Walz, Individually

Lisa Frazier, Individually

OmahaSteaks.com, Inc.

By Al Rutherford
Its Vice President & CFO

DONE AND ORDERED this 11th day of Apr. 1, 2017


Honorable Arthur L. Schwab
UNITED STATES DISTRICT JUDGE

cc: Counsel of record via CM/ECF

EXHIBIT A

WEB ACCESSIBILITY STATEMENT

OmahaSteaks.com, Inc. (“Omaha Steaks”) is committed to facilitating the accessibility and usability of its Website, www.omahasteaks.com (the “Website”). To accomplish this, Omaha Steaks will be implementing over time the relevant portions of the World Wide Web Consortium’s Web Content Accessibility Guidelines 2.0 Level AA (“WCAG 2.0 AA”) as its web accessibility standard, which will also bring the Website and other Consumer Facing Properties into further conformance with the Section 508 Web Accessibility Standards developed by the United States Access Board. Our Website will be tested on a periodic basis with assistive technology such as screen readers and screen magnifiers, and with users with disabilities who use these technologies.

We have engaged an experienced accessibility consultant to assess the Website and to provide Omaha Steaks with specific recommendations to facilitate website accessibility and conformance with WCAG 2.0 AA standards.

Omaha Steaks has adopted a website accessibility policy to support its commitment to the accessibility of its Website.

Contact Omaha Steaks With Your Accessibility Questions:

Please be aware that our efforts are ongoing. If, at any time, you have specific questions or concerns about the accessibility of any particular web page on this Website, please contact us at Legal@omahasteaks.com. If you do encounter an accessibility issue, please be sure to specify the web page in your email, and we will make all reasonable efforts to make that page accessible for you.